No. 93-1935

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

CURTISS-WRIGHT CORPORATION,

Petitioner,

—v.—

FRANK C. SCHOONEJONGEN, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED JUNE 1, 1994
CERTIORARI GRANTED SEPTEMBER 26, 1994

BEST AVAILABLE COPY

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RELEVANT DOCKET SHEET ENTRIES

United States District Court for the District of New Jersey

	DESCRIPTION	DATE
1.	Complaint filed by Frank C. Schoonejongen; Wesley L. Losson; John S. Dunning; William Martone; William V. Hanzalek; Edward F. Ziek; Melvin Deblock; Joseph Colquhoun; Joseph Majerscak; Gerard Abbamont; Olga Wolsey	October 31, 1984
2.	Answer filed by Curtiss-Wright Corporation Filed:	January 7, 1985
3.	Order Dismissing Count II of Complaint Entered:	April 8, 1985
4.	Answer to First Amended Complaint Filed:	August 29, 1985
5.	First Amended Complaint Filed:	January 29, 1986
6.	Order granting in part motion of defendant for summary judgment as to Count I and denying all other aspects of plaintiffs' and defendant's cross-motions for partial summary judgment Entered:	April 15, 1986
7.	Transcript of the proceedings of the summary judgment motion Filed:	April 23, 1986

	DESCRIPTION	DATE
8.	Order dismissing plaintiffs' claims for damages for mental distress and anguish Entered:	June 24, 1986
9.	Opinion of the District Court for the District of New Jersey granting plaintiffs' motion to divide plaintiffs' class into subclasses and granting in part and denying in part plaintiffs' motion for summary judgment and denying cross-motions for summary judgment on the factual common law breach of contract claim in Counts I and II Entered:	August 15, 1988
10.	Hearing on defendant's motion to dismiss promissory estoppel claims in Count II; hearing on defendant's motion to dismiss any claims for employee benefits based upon an ERISA violation of nondisclosure of benefits Held:	September 19, 1990
11.	Order dismissing plaintiffs' cause of action for promissory estoppel and dismissing plaintiffs' cause of action for violations of reporting disclosure and requirements of ERISA Entered:	September 24, 1990
12.	Trial without a jury Held:	September 25, 1990

	DESCRIPTION	DATE
13.	Trial without a jury continued; portion of deposition transcripts of David Morrison, Frank Saunders, Elmer Van Broekhoven & Wesley Losson offered into evidence; hearing on defendant's application to dismiss Complaint under Rule 41(b) and dismiss claims of certain subclasses Held:	September 26, 1990
14.	Trial without a jury continued; Ordered defendant's application for order, heard on September 26, 1990, denied Entered:	September 28, 1990
15.	Trial without a jury continued Held:	October 1, 1990
16.	Transcript of proceedings of September 28, 1990 Filed:	October 1, 1990
17.	Trial without a jury continued Held:	October 2, 1990
18.	Trial without a jury continued Held:	October 3, 1990
19.	Trial without a jury continued. Judgment of the United States Court for the District of New Jersey for plaintiffs. Opinion stated into record Entered:	October 4, 1990
20.	Page and line numbers of various depositions Filed:	October 5, 1990

	DESCRIPTION	DATE
21.	Opinion of the United States District Court for the District of New Jersey Entered:	December 18, 1990

United States Court of Appeals for the Third Circuit

	DESCRIPTION	DATE
1.	Notice of Appeal by Curtiss-Wright Corporation filed in the United States Court of Appeals for the Third Circuit Filed:	December 9, 1992
2.	Opinion of the Court of Appeals for the Third Circuit Entered:	December 28, 1993
3.	Petition by Curtiss-Wright Corporation for Rehearing and Suggestion for Rehearing in Banc Filed:	January 11, 1994
4.	Opinion of the Court of Appeals for the Third Circuit vacating its December 28, 1993 Opinion Entered:	March 3, 1994
5.	Judgment of the United States Court of Appeals for the Third Circuit Entered:	March 3, 1994
6.	Order of the Court of Appeals for the Third Circuit on Petition for Rehearing Entered:	March 3, 1994

	DESCRIPTION	DATE
7.	Order of the Court of Appeals for the Third Circuit denying Petition for Rehearing in Banc Entered:	March 14, 1994

Supreme Court of the United States

	DESCRIPTION	DATE
1.	Petition for Writ of Certiorari Filed:	June 1, 1994
2.	Order allowing Certiorari Entered:	September 26, 1994

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY

FRANK C. SCHOONEJONGEN; WESLEY L. LOSSON; JOHN S. DUNNING; WILLIAM MARTONE; WILLIAM V. HANZALEK; EDWARD F. ZIEK; MELVIN DEBLOCK; JOSEPH COLQUHOUN; JOSEPH MAJERSCAK; GERARD ABBAMONT; and OLGA WOLSEY, on behalf of themselves and all others similarly situated,

Plaintiffs,

—vs—

CURTISS-WRIGHT CORPORATION,

Defendant.

FIRST AMENDED COMPLAINT
[Filed August 14, 1985]

Plaintiffs, for themselves and all other members of the class hereinafter defined, by and through their undersigned attorneys, complain of Defendant as follows:

Nature of Action, Jurisdiction, Parties and Venue

1. This action is brought by Plaintiffs in their individual capacities and as a class action pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure.

2. Count I is brought under Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as

amended (ERISA), 29 U.S.C. § 1132(a)(1)(B), and seeks to recover benefits due and to clarify rights to future benefits. The Court has jurisdiction over Count I under 502(a)(1)(B) and (e)(1) of ERISA, 29 U.S.C. § 1132(a)(1)(B) and (e)(1).

3. Count II is brought as a contract action under federal common law and seeks declaratory and injuctive [sic] relief and damages for Defendant's breach of an agreement to provide certain benefits to Plaintiffs and to the class of individuals which Plaintiffs represent. This Court has jurisdiction over Count II under 28 U.S.C. § 1331.

4. Defendant Curtiss-Wright Corporation (the "Company") was, and is, at all relevant time, a Delaware corporation headquartered at One Passaic Street, Wood-Ridge, New Jersey 07075.

5. Defendant Company was and is qualified to do business in the State of New Jersey and operated a production facility at Wood-Ridge, New Jersey until on or about November 30, 1983.

6. Plaintiff Frank C. Schoonejongen is a former employee of Curtiss-Wright Corporation who was employed at its Wood-Ridge facility as Supervisor of Plant Engineering. He retired in September 1976 after more than thirty-six years of service with the Company. He received certain post-retirement health benefits until Defendant cut off those benefits on December 1, 1983.

7. Plaintiff Wesley L. Losson is a former employee of Curtiss-Wright Corporation who was employed at its Wood-Ridge facility as Manager of Manufacturing and Technical Assistant License Agreements. He retired in October 1964 after thirty-six years of service with the Company. He received certain post-retirement health benefits until Defendant cut off those benefits on December 1, 1983.

8. Plaintiff John S. Dunning is a former employee of Curtiss-Wright Corporation who was employed at its Wood-Ridge

facility as Supervisor in Production Manufacturing. He retired in November 1976 after thirty-nine years of service with the Company. He received certain post-retirement health benefits until Defendant cut off those benefits on December 1, 1983.

9. Plaintiff Olga Wolsey is a former employee of Curtiss-Wright Corporation who was employed at its Wood-Ridge facility as Senior Personnel Clerk. She retired in January 1981 after a [sic] twenty-four years of service with the Company.

10. Plaintiff William Martone is a former employee of Curtiss-Wright Corporation who was employed at its Wood-Ridge facility as a Supervisor of Production Planning and in Inventory Control. He retired in December 1982 after thirty-eight years of service with the Company. He received certain post-retirement health benefits until those benefits were cut off by Defendant on December 1, 1983.

11. Plaintiff William V. Hanzalek is a former employee of Curtiss-Wright Corporation was who [sic] employed at its Wood-Ridge facility as Manager of Marketing Services. He retired in March 1983 after over forty years of service with the Company. He received certain post-retirement health benefits until those benefits were cut off by Defendant on December 1, 1983.

12. Plaintiff Gerard Abbamont is a former employee of Curtiss-Wright Corporation who was employed at its Ridge-Wood facility as Manager of Experimental Testing and Assembly. He retired in December 1982 after forty years of service with the Company. He received certain post-retirement health benefits until those benefits were cut off by Defendant on December 1, 1983.

13. Plaintiff Joseph Colquhoun is a former employee of Curtiss-Wright Corporation who was employed at its Wood-Ridge facility as a Buyer-Specialist. He retired in November 1983 after thirty-two years of service with the Company. Defendant refused to provide him with any post-retirement health benefits.

14. Plaintiff Edward F. Ziek is a former employee of Curtiss-Wright Corporation who was employed at its Wood-Ridge facility as Facility Engineer in Plant Engineering. He retired in January 1984 after twenty-eight years of service with the Company. Defendant refused to provide him with any post-retirement health benefits.

15. Plaintiff Melvin DeBlock is a former employee of Curtiss-Wright Corporation who was employed at its Wood-Ridge facility as Supervisor and Senior Engineer. He retired in May 1984 after forty-two years of service with the Company. Defendant refused to provide him with any post-retirement health benefits.

16. Venue in this judicial district is proper under 29 U.S.C. § 1391 and 29 U.S.C. § 1132(e)(2).

17. A copy of this Complaint has been served upon the Secretary of Labor and Secretary of the Treasury as required by Section 502(b) of ERISA, 29 U.S.C. § 1132(b).

FACTUAL BACKGROUND

18. In or about 1966, Defendant Curtiss-Wright Corporation instituted a post-retirement health benefits program which provided medical and surgical benefits to its retirees and their eligible dependents. Defendant Company bore the full cost of this program and extended it to those employees who had retired prior to the institution of the program.

19. Defendant Curtiss-Wright Corporation distributed booklets and other material describing the post-retirement health benefits program to its employees at various times during the years following the institution of the program.

20. Representatives of Defendant Curtiss-Wright Corporation met with employees at the time of such employees' retirement and described the post-retirement health benefits which they would receive. Such representatives never

informed the retirees that their coverage was terminable under any circumstances or conditional in any way.

21. Representatives of Defendant Curtiss-Wright Corporation also reassured retired employees at various times that these post-retirement health benefits would continue indefinitely following of [sic] such employees' retirement.

22. On or about September 28, 1983, Defendant Curtiss-Wright Corporation announced that it was phasing out all production operations at the Wood-Ridge facility where Plaintiffs worked or had worked. It was announced that all operations at that facility would cease by November 30, 1983.

23. In a letter dated November 4, 1983 to all retired Wood-Ridge non-bargaining unit employees, Defendant Curtiss-Wright Corporation announced that it was terminating all post-retirement health benefits effective December 1, 1983.

24. Each of the named Plaintiffs received his or her salary, promotions and benefits from the corporate offices of Curtiss-Wright Corporation, rather than from the Wood-Ridge facility itself.

CLASS ACTION ALLEGATIONS

25. Plaintiffs bring this action individually and on behalf of others similarly situated to recover the health benefits due them and to clarify their rights to such benefits in the future.

26. The class represented by Plaintiffs is defined as follows: all those retired Wood-Ridge employees of Defendant Company who were not members of the bargaining unit represented by the United Auto Workers at the time of their retirement and whose post-retirement health benefits were terminated or denied on or about December 1, 1983.

27. The class of Plaintiffs is so numerous as to make it impracticable to bring all the members of the class before the Court. The exact number of individuals comprising the class

is unknown to Plaintiffs but may be determined from records maintained by Defendant. Such records will also disclose the names and addresses of the class members.

28. Common questions of law and fact affect the rights of each member of Plaintiffs [sic] class and a common type of relief is sought for that class.

29. Plaintiffs' claims are typical of the claims of the class defined above in that each individual Plaintiff was a non-bargaining unit employee of Defendant Company at its Wood-Ridge facility, each has retired and is receiving pension benefits and each has been denied post-retirement health benefits for the period subsequent to December 1, 1983.

30. Plaintiffs will fairly and adequately represent the interests of the class. No Plaintiff has an interest adverse to the interests of the class, and counsel retained by Plaintiffs and the class are experienced in class actions and otherwise thoroughly competent.

31. Prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual members.

32. The class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CLAIMS FOR RELIEF

COUNT I

33. Plaintiffs reallege and incorporate by reference paragraph I through 32 above as though fully set forth herein.

34. Defendant Curtiss-Wright Corporation is an employer within the meaning of ERISA, 29 U.S.C. § 2201(5).

35. The post-retirement health program established and maintained by Curtiss-Wright Corporation for the purpose of

providing certain medical, surgical, hospital and other health benefits for retired employees and their eligible dependents is an "employee benefit plan" within the meaning of ERISA, 29 U.S.C. § 1102(3).

36. Upon information and belief, Curtiss-Wright Corporation is the "plan sponsor" and "administrator" of that employee benefit plan and therefore a "plan fiduciary" within the meaning of ERISA, 29 U.S.C. § 1002(16) and (21).

37. The individual Plaintiffs and the members of the class are "participants" of that employee benefit plan within the meaning of ERISA, 29 U.S.C. § 1002(7).

38. Under the terms of this employee benefit plan, Defendant Curtiss-Wright Corporation promised to provide certain retired employees and their eligible dependents with specified medical benefits for the duration of those retirees' lives.

39. Notwithstanding the cessation of production operations by Defendant Curtiss-Wright Corporation at its Wood-Ridge facility, persons who have retired from active employment with Defendant Curtiss-Wright Corporation and their eligible dependents continue to be entitled to receive the health benefits promised under the employee benefit plan for the duration of the retirees' lives, since they have fully performed the services and satisfied all of the conditions required to entitle them to lifetime vested benefits under that employee benefit plan.

40. By terminating health benefits under the employee benefit plan for Plaintiffs and the members of the class and by refusing to provide such benefits in accordance with the terms of that plan and with its representations to those retirees, Defendant Curtiss-Wright Corporation has violated its fiduciary duty by arbitrarily and capriciously refusing to apply the terms of that employee benefit plan.

COUNT II

41. Plaintiffs reallege and incorporate by reference paragraphs 1 through 40 above as though fully set forth herein.

42. Defendant Curtiss-Wright Corporation and its representatives and agents assured Plaintiffs and the other class members that it had established and planned to continue a post-retirement health program which was to provide certain health benefits to each retiree and his or her eligible dependents for the duration of each retiree's life. Such representations were repeatedly made to Plaintiffs and the other class members while actively employed and at the time of and subsequent to the dates of their respective retirements.

43. These representations by Defendant concerning a post-retirement health program were part of a package of employee benefits that induced Plaintiffs and the other class members to continue in the employ of the Defendant Curtiss-Wright Corporation rather than to seek or accept other employment opportunities.

44. Plaintiffs and other class members relied on these representations to their detriment.

45. Defendant Curtiss-Wright Corporation contractually obligated itself to provide the promised medical benefits to Plaintiffs and the other class members, as well as their eligible dependents, for the duration of the lives of the retirees.

46. Defendant Curtiss-Wright Corporation has breached that contract. Plaintiffs and the other class members have been injured by that breach.

WHEREFORE, Plaintiffs and the class which they represent respectfully pray that this Court grant the following relief with respect to both Count I and Count II:

A. A determination that this action shall proceed as a class action in behalf of the class of Plaintiffs hereinabove described.

B. A declaratory judgment that retired employees of Defendant Company and their eligible dependents are entitled to the post-retirement health benefits promised under the employee benefit plan described in Count I and in the contract described in Count II for the duration of the retirees' lives, and that Curtiss-Wright Corporation is obligated to provide said retirees and their eligible dependents with such medical benefits for the duration of their lives.

C. Injunctive and mandatory relief requiring Defendant Curtiss-Wright Corporation to provide such post-retirement medical benefits to Plaintiffs and the other members of the class for the duration of their lives.

D. Judgment against Defendant Curtiss-Wright Corporation in an amount equal to all costs and expenses sustained by Plaintiffs and the other members of the class as a result of the failure and refusal of Curtiss-Wright Corporation to provide such post-retirement health benefits, including but not limited to:

1. All premiums paid to obtain insurance coverage to replace the benefits previously provided by Defendant Curtiss-Wright Corporation; and

2. All direct payments for medical, surgical, hospital and any other medical benefit or service which should have been provided by Defendant Curtiss-Wright Corporation.

E. Judgment granting damages against Defendant Curtiss-Wright Corporation for mental distress and anguish suffered by Plaintiffs and the other members of the class as a result of the failure and refusal of Curtiss-Wright Corporation to provide such promised post-retirement health benefits.

F. Attorneys fees and the costs and disbursements of this action.

G. Such further relief as the Court may deem just.

Dated: May 27, 1985

Respectfully submitted,

LEWIS, GREENWALD, KENNEDY
& LEWIS, P.C.

By: NICHOLAS F. LEWIS
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ANSWER TO FIRST AMENDED COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Filed August 29, 1985
[Caption Omitted in Printing]

Defendant Curtiss-Wright Corporation, maintaining a place of business at 1200 Wall Street West, Lyndhurst, New Jersey 07071, answering the Complaint of the plaintiffs says:

Nature of Action, Jurisdiction, Parties and Venue

1. It denies that this action is properly maintained as a class action. Except as so denied, it neither admits nor denies the allegations of paragraph 1, and says further that they constitute legal conclusions to which it is not required to respond.

2. It denies that any benefits or future benefits are due to plaintiffs. Except as so denied, it neither admits nor denies the allegations of paragraph 2 and says further that they constitute legal conclusions to which it is not required to respond.

3. It denies that it breached any agreement to provide benefits to plaintiffs or to the class of individuals plaintiffs purport to represent. Except as so denied, it neither admits nor denies the allegations of paragraph 3, and says further that they constitute legal conclusions to which it is not required to respond.

4. It admits that it is a Delaware corporation. Except as so admitted, it denies the allegations of paragraph 4.

5. It admits the allegations of paragraph 5.

6. It admits that plaintiff Frank C. Schoonejongen was at one time an employee of Curtiss-Wright Corporation, and that he received certain post-retirement health benefits. Except as so admitted, it denies the allegations of paragraph 6.

7. It admits that plaintiff Wesley L. Losson was at one time an employee of Curtiss-Wright Corporation, and that he received certain post-retirement health benefits. Except as so admitted, it denies the allegations of paragraph 7.

8. It admits that plaintiff John S. Dunning was at one time an employee of Curtiss-Wright Corporation, and that he received certain post-retirement health benefits. Except as so admitted, it denies the allegations of paragraph 8.

9. It admits that plaintiff Olga Wolsey was at one time an employee of Curtiss-Wright Corporation, and that she received certain post-retirement health benefits. Except as so admitted, it denies the allegations of paragraph 9.

10. It admits that plaintiff William Martone was at one time an employee of Curtiss-Wright Corporation, and that he received certain post-retirement health benefits. Except as so admitted, it denies the allegations of paragraph 10.

11. It admits that plaintiff William V. Hanzalek was at one time an employee of Curtiss-Wright Corporation, and that he received certain post-retirement health benefits. Except as so admitted, it denies the allegations of paragraph 11.

12. It admits that plaintiff Gerard Abbamont was at one time an employee of Curtiss-Wright Corporation, and that he received certain post-retirement health benefits. Except as so admitted, it denies the allegations of paragraph 12.

13. It admits that plaintiff Joseph Colquhoun was at one time an employee of Curtiss-Wright Corporation, and that he received certain post-retirement health benefits. Except as so admitted, it denies the allegations of paragraph 13.

14. It admits that plaintiff Edward F. Ziek was at one time an employee of Curtiss-Wright Corporation, and that he received certain post-retirement health benefits. Except as so admitted, it denies the allegations of paragraph 14.

15. It admits that plaintiff Melvin DeBlock was at one time an employee of Curtiss-Wright Corporation, and that he

received certain post-retirement health benefits. Except as so admitted, it denies the allegations of paragraph 15.

16. It neither admits nor denies the allegations of paragraph 16 and says further that they constitute legal conclusions to which it is not required to respond.

17. It is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17.

Factual Background

18. It admits that in or about 1966 it instituted limited health benefits to certain of its retired employees and their eligible dependents; that it bore the cost of certain of the benefits and that it extended benefits to employees who had retired prior to institution of the benefit program. Except as so admitted, it denies the allegations of paragraph 18.

19. It admits that from time to time it distributed to certain individuals booklets and other materials describing its health benefits program for certain employees and retired employees. Except as so admitted, it denies the allegations of paragraph 19.

20. It admits that from time to time its representatives met with various employees and during the course of those meetings described the nature of various post-retirement benefits. Except as so admitted, it denies the allegations of paragraph 20.

21. It denies the allegations of paragraph 21.

22. It admits the allegations of paragraph 22.

23. It denies the allegations of paragraph 23.

24. It denies the allegations of paragraph 24.

Class Action Allegations

25. It denies that this action is properly maintained as a class action and that plaintiffs or the class of individuals they purport to represent are due any health benefits or have any right to future benefits.

26. It denies that the group of individuals described in this paragraph constitutes an appropriate class.

27. It admits that it maintains certain records that contain the names and addresses of various of its employees and former employees. Except as so admitted, it denies the allegations of paragraph 27.

28. It denies the allegations of paragraph 28.

29. It denies the allegations of paragraph 29.

30. It denies the allegations of paragraph 30.

31. It denies the allegations of paragraph 31.

32. It denies the allegations of paragraph 32.

Claims for Relief

Count I

33. It repeats and incorporates by reference its answer as to paragraphs 1 through 32 as if fully set forth herein.

34. It neither admits nor denies the allegations of paragraph 34 and says further that they constitute legal conclusions to which it is not required to respond.

35. It neither admits nor denies the allegations of paragraph 35 and says further that they constitute legal conclusions to which it is not required to respond.

36. It neither admits nor denies the allegations of paragraph 36 and says further that they constitute legal conclusions to which it is not required to respond.

37. It neither admits nor denies the allegations of paragraph 37 and says further that they constitute legal conclusions to which it is not required to respond.

38. It denies the allegations of paragraph 38.

39. It denies the allegations of paragraph 39.

40. It denies the allegations of paragraph 40.

Count II

41. It repeats its answer as to paragraphs 1 through 40 as if fully set forth herein.

42. It denies the allegations of paragraph 42.

43. It denies the allegations of paragraph 43.

44. It denies the allegations of paragraph 44.

45. It denies the allegations of paragraph 45.

46. It denies the allegations of paragraph 46.

47. It denies that plaintiffs or any of them are entitled to the relief set forth in the *ad damnum* clause, or to any other relief.

FIRST SEPARATE DEFENSE

The Complaint fails to state a claim upon which relief can be granted against defendants.

SECOND SEPARATE DEFENSE

The Court lacks subject matter jurisdiction over plaintiffs' claims.

THIRD SEPARATE DEFENSE

This action does not satisfy the requirements for a class action and cannot be maintained as a class action.

FOURTH SEPARATE DEFENSE

Even if this action were otherwise maintainable as a class action—which it is not—plaintiffs are not proper or adequate representatives for the alleged class.

FIFTH SEPARATE DEFENSE

Plaintiffs' action is barred because conditions precedent to eligibility for medical benefits were not fulfilled.

SIXTH SEPARATE DEFENSE

There was no consideration for defendant's alleged promise to pay medical benefits to plaintiffs; any such payments were merely gratuitous.

SEVENTH SEPARATE DEFENSE

By their acts and conduct, plaintiffs are estopped from asserting claims in this action.

EIGHTH SEPARATE DEFENSE

Plaintiffs' claims in this action are barred by the doctrines of waiver and satisfaction and accord.

CARPENTER, BENNETT & MORRISSEY
Attorneys for Defendant
Curtiss-Wright Corporation

By: EDWARD F. RYAN
Edward F. Ryan
A Member of the Firm

Dated: August 29, 1985

JOINT EXHIBIT 54

Admitted into evidence September 28, 1990, in the United States District Court for the District of New Jersey, at Transcript 4.9

CURTISS-WRIGHT EMPLOYEE BENEFIT PLAN TRUST AGREEMENT

TRUST AGREEMENT, hereinafter referred to as the "Agreement," made as of the 1st day of September 1976, by and between CURTISS-WRIGHT CORPORATION, a corporation organized and existing under the laws of the State of Delaware, (hereinafter referred to as the "Company") and NEW JERSEY BANK, incorporated under the laws of the State of New Jersey, (hereinafter referred to as the "Trustee").

WITNESSETH:

WHEREAS, the Company has heretofore adopted an employee benefit plan designated as "Curtis-Wright Employee Benefit Plan" (hereinafter with any amendments thereto referred to as the "Plan") for its eligible employees, and their beneficiaries, thereunder for the purpose of providing for the payment of life, sick and accident benefits covered by Section 501(c)(9) of the Internal Revenue Code of 1954, as amended; and

WHEREAS, certain functions of the Plan are to be administered and serviced by an insurance company ("Service Organization") selected by the Company under the supervision and direction of the Company, which is the Plan Administrator and the Plan Fiduciary.

NOW, THEREFORE, the Company and the Trustee hereby agree that the trust agreement provides in its entirety as follows:

ARTICLE I

The Company hereby establishes, and the Trustee hereby agrees to hold in trust, a trust consisting of cash and such other property acceptable to the Trustee as shall from time to time be paid or delivered to the Trustee and the earnings and profits thereon. All such cash and other property, all investments made therewith and proceeds thereof and all earnings and profits thereon, less the payments which at the time of reference shall have been made by the Trustee, as authorized herein, are referred to herein as the "Fund." The Fund shall be held, managed and administered by the Trustee in trust in accordance with the provisions of this Agreement without distinction between principal and income. At no time prior to the satisfaction of all liabilities with respect to the employees eligible for benefits under the Plan, or their beneficiaries, shall any part of the Fund be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, except to the extent permitted by any applicable law, regulations, or ruling. The provisions of the trust as set forth in this trust agreement are effective as of September 1, 1976.

This Agreement encompasses a number of varied benefits, each of which shall be administered under appropriate procedures provided, from time to time, by the Company, and agreed to by the Trustee.

ARTICLE II

The Trustee shall make payments out of the Fund in accordance with the Plan to such persons, in such manner and in such amounts as may be directed in writing by the Company or as may be specified by checks issued by the Service Organization, and upon any such payment being made, the amount thereof shall no longer constitute a part of the Fund. The Company shall be responsible for the acts of the Service Organization and its administration and service of the Plan. The Trustee shall be responsible only for property actually received by it hereunder, and it shall have no duty or authority to compute any amount to

be paid to it by the Company or to bring any action or proceeding to enforce the collection from the Company of any contributions to the Fund. The Trustee shall not be responsible for the adequacy of the Fund to meet and discharge any and all liabilities under the Plan.

The foregoing provisions of this ARTICLE II with respect to the making of payments shall be deemed to be an allocation of fiduciary responsibility, as between the Company or the Service Organization on the one side and the Trustee on the other, pursuant to and to the extent permitted under Section 405 under The Employee Retirement Income Security Act (hereinafter referred to as "ERISA"), in respect only of the determination of the persons to whom, and the manner and the amounts in which, such payments are to be made, to the extent the same are in conformity with such written directions, and the Trustee shall not be liable for any act or omission of the Company or of the Service Organization, respectively, in carrying out such allocated fiduciary responsibility. To the extent permitted by law, the duties and responsibilities of the Trustee under this ARTICLE II shall be deemed to be limited to the making of such payments as directed by the Company or the Service Organization.

ARTICLE III

Subject to the provisions of ARTICLE IV hereof, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested, without distinction between principal and income, in bank certificates of deposit, U.S. Treasury Bills and other fixed income securities bearing maturities not to exceed ten (10) years issued by the U.S. Treasury or issued by corporations, provided such corporate issues are traded on the New York Stock Exchange and carry a Standard & Poor rating of AA or better.

ARTICLE IV

The discretion of the Trustee in investing and reinvesting the principal and income of the Fund shall be subject to such invest-

ment policy and objectives, if any, as the Company may be authorized, from time to time, to establish such investment policy and objectives under the Plan, may adopt from time to time and communicate to the Trustee in writing. It shall be the duty of the Trustee to act strictly in accordance with any such investment policy and objectives as may be communicated to the Trustee from time to time in writing. Any such investment policy and objectives shall be consistent with the purposes of the Plan and the requirements of applicable law.

ARTICLE V

In the administration of the Fund, the Trustee is authorized and empowered, to the extent permitted by applicable law:

(a) To invest in only those securities described in ARTICLE III;

(b) To sell, exchange, convey, transfer or otherwise dispose of any securities or property held by it, by private contract or at public auction, and no person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition;

(c) To register any investment held in the Fund in its own name or in the name of a nominee and to hold any investment in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Fund;

(d) To employ suitable legal counsel and to pay reasonable expenses and compensation therefor; provided, however, that the Company shall have no obligation to pay any such expense or compensation in connection with any claim or liability which arises by reason of a negligent or willful breach by the Trustee of the provisions of this Agreement or breach of its fiduciary duty;

(e) Subject to written authority from the Company, to borrow or raise monies for the purposes of the trust in such amount and

upon such terms and conditions as the Trustee in its absolute discretion may deem advisable; and for any sums so borrowed to issue its promissory note as Trustee and to secure the repayment thereof by pledging all or any part of the Fund; and no person loaning money to the Trustee shall be bound to see to the application of the money or to inquire into the validity, expediency or propriety of any such borrowing; provided, however, that loans or advances may be made by the Trustee hereunder to the Fund, by way of overdrafts or otherwise, on a temporary basis, on which no interest is payable, without need of any authorization or ratification by the Company;

(f) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

(g) To settle, compromise or submit to arbitration any claims, debts or damages, due or owing to or from the Trust, to commence or defend suits or legal proceedings and to represent the Trust in all suits or legal proceedings in any court of law or before any other body or tribunal;

(h) To do all other acts the Trustee may deem necessary or appropriate either to carry out any of the Trustee's powers granted under this Agreement, or to perform the Trustee's duties imposed by reason of this Agreement or otherwise by law.

ARTICLE VI

In addition to the expenses referred to in ARTICLE V hereof, the expenses incurred by the Trustee in the performance of its duties, which have been authorized in writing by the Company, including but not limited to fees for actuarial services, accounting services and advisory services rendered to the Trustee, such compensation for the Trustee as may be agreed upon in writing from time to time between the Company and the Trustee, and all other proper charges and disbursements of the Trustee, shall be paid by the Trust. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon or

in respect of the Fund or the income thereof, and all fees and other expenses incurred by the Trustee in connection with transactions in securities for the Fund, shall be paid from the Fund without the necessity for the specific direction of the Company.

ARTICLE VII

The Trustee shall discharge its duties under this Agreement solely in the interest of the participants in the Plan and their beneficiaries and for the exclusive purpose of providing benefits to such participants and their beneficiaries with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims in accordance with the provisions of this Agreement insofar as they are consistent with the provisions of ERISA; but the duties and obligations of the Trustee as such shall be limited to those expressly imposed upon it by this Agreement or by applicable law notwithstanding any reference herein to the Plan, or to the provisions thereof it being hereby expressly agreed by the parties hereto that the Trustee is not a party to the Plan.

ARTICLE VIII

The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the Company. Within fifteen (15) days after the end of each month, the Trustee shall provide to the Company and the Service Organization a written report in respect of the Fund's deposits, withdrawals and inventory of holdings. Within ninety (90) days following the close of each fiscal year of the trust and within ninety (90) days after the removal or resignation of the Trustee as provided in ARTICLE IX hereof, the Trustee shall file with the Company a written account setting forth all investments, receipts, disbursements and other transactions effected by it during such fiscal year or

during the period from the close of the last fiscal year to the date of such removal or resignation. Upon the expiration of one hundred twenty (120) days from the date of filing such annual or other account, the Trustee, to the extent permitted by law, shall be forever released and discharged from all liability and accountability to anyone with respect to the propriety of its acts and transactions disclosed in or reasonably to be inferred from such account as though such account had been settled by decree of a court of competent jurisdiction in an action or proceeding in which all interested parties had duly appeared, except with respect to any such acts or transactions as to which the Company shall within such one hundred twenty (120) day period file with the Trustee written objections. To the extent permitted by law, but subject to any express provision of applicable law as may be in effect from time to time to the contrary, no person other than the Company may require an accounting or bring any action against the Trustee with respect to the Fund or its actions as Trustee.

ARTICLE IX

The Trustee may be removed by the Company at any time upon sixty (60) days notice in writing to the Trustee. The Trustee may resign at any time upon sixty (60) days notice in writing to the Company and the Service Organization. Upon such removal or resignation of the Trustee, the Company shall appoint a successor and, upon acceptance of such appointment by the successor trustee, the Trustee shall assign, transfer and pay over to such successor trustee the funds and properties then constituting the Fund. The Trustee is authorized, however, to reserve the amount due it hereunder for payment of its fees and expenses and such sum of money, as to it may deem advisable, for payment of any taxes levied on the trust or income of the trust by any governmental authority having jurisdiction, and any balance of such reserve remaining after the payment of the Trustee's fees and expenses and such taxes shall be paid over to the successor trustee as promptly as possible under the circumstances.

ARTICLE X

The Company shall designate in writing to the Trustee, the person or persons authorized to act in its behalf with respect to the provisions of this Agreement. Such designations shall be acknowledged by the Secretary of the Company and the signatures of the person or persons so designated by the Company shall also be certified by the Secretary. The Trustee shall be authorized to rely upon such designation or designations until notified to the contrary in writing by the Secretary of the Company.

ARTICLE XI

The Trustee shall be fully protected in relying upon written directions of the Company or the checks written by the Service Organization with respect to any disbursements ordered by the Service Organization or the Company.

ARTICLE XII

The Company reserves the right at any time and from time to time by action of its Board of Directors to amend, in whole or in part, any or all of the provisions of this Agreement by notice thereof in writing delivered to the Trustee, provided that no such amendment which affects the rights, duties or responsibilities of the Trustee may be made without its consent, and provided further that no such amendment shall authorize or permit, at any time prior to the satisfaction of all liabilities with respect to the employees eligible under the Plan, or their beneficiaries, any part of the corpus or income of the Fund (other than such part as is required to pay taxes and administration expenses) to be used for, or diverted to, purposes other than for the exclusive benefit of such employees or their beneficiaries, except to the extent permitted by ERISA.

ARTICLE XIII

The Trust whose terms are set forth in this Agreement may be terminated at any time by the Company, and upon such termi-

nation the Fund shall be paid out by the Trustee as and when directed by the Company, in accordance with the provisions of ARTICLE II hereof.

In the case of the termination of the Plan, any residual assets of the Plan may be distributed to the Company at the direction of the Company if all liabilities of the Plan to participants and their beneficiaries have been satisfied and the distribution does not contravene any provision of law.

In case the Plan is terminated in whole or in part by the Company or otherwise as authorized by ERISA or corresponding provisions of any subsequent applicable law in effect at the time the Trustee (subject to the provisions of ARTICLE I of this Agreement and reserving such sums as the Trustee shall deem necessary in settling its accounts and to discharge any obligations of the Fund for which the Trustee may be liable) shall apply or distribute the Fund in accordance with the written directions of the Company. Upon such termination of the Plan in whole or in part, the Trustee shall have a right to have its accounts settled as provided in ARTICLE VIII of this Agreement. When the accounts of the Trustee have been so settled and thereafter the Fund shall have been applied or distributed in accordance with such settlement, except as otherwise provided in ARTICLE VIII of this Agreement, the Trustee shall be released and discharged from all further accountability or liability respecting the Fund (or that part of the Fund so applied or distributed if the Plan is terminated only in part) and shall not be responsible in any way for the further disposition of the Fund (or that part of the Fund so applied or distributed, if the Plan is terminated only in part) or any part thereof so applied or distributed.

ARTICLE XIV

With the exception that an assignment of benefits for medical services actually performed may be made in accordance with the procedures approved by the Company or the Service Organization or provided by the Plan, no benefit which shall be payable out of the Fund to any person (including employees or

former employees of the Company eligible under the Plan or their beneficiaries) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void; and no such benefit shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same will not be recognized by the Trustee except to such an extent as may be required by applicable law.

If any person who shall be entitled to any benefit hereunder shall become bankrupt or attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge such benefit, then such benefit shall, in the discretion of the Service Organization or of the Company, cease and terminate, and in that event the Service Organization or the Company may cause the same, or any part thereof, to be held or applied for the benefit of such person, his spouse, children, or other dependents or any of them in such manner and in such proportion as the Service Organization or the Company shall determine. Any claim overpayment or wrongly paid claim shall not inure to the benefit of the employee but shall be returned to the Trustee.

ARTICLE XV

Any subsidiary (as used herein, the term "subsidiary" shall mean any corporation at least a majority of whose voting stock, not including shares having voting power only upon the happening of an event of default or directors' qualifying shares, if any, is at the time owned directly or indirectly by the Company) may, with the approval of the Board of Directors of the Company by resolution of its own Board of Directors adopt the trust whose terms are set forth in this Agreement, as amended from time to time, if such subsidiary shall have adopted the Plan.

Any such subsidiary may at any time segregate the part of the Fund attributable to it and continue the same in accordance with the provisions of this Agreement, as amended from time to time,

as though such subsidiary were the sole creator thereof. In such event, the Company shall direct the Trustee to deliver to itself as Trustee of any such segregated and separate Fund such cash and such securities or other property as may be determined to constitute the proportionate share of the assets then held in respect of employees of such subsidiary, or beneficiaries of such employees. Such subsidiary may thereafter exercise, in respect of such separate and segregated Fund, all of the rights and powers reserved to the Company under the provisions of this Agreement, as amended from time to time.

ARTICLE XVI

Subject to any provisions of ERISA, or other applicable law, which may be applicable and provide to the contrary, this Agreement, as amended from time to time, shall be administered, construed and enforced according to the laws of the State of New Jersey.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized and their corporate seals to be hereunto affixed and attested as of the day of year first above written.

CURTISS-WRIGHT CORPORATION

By CHARLES EHINGER
Executive Vice President

Attest:
FRANCIS FALLON
Secretary

NEW JERSEY BANK

By KENNETH HAARDT

Attest:
SOPHIE W. POHL

JOINT EXHIBIT 64

Admitted into evidence September 28, 1990, in the United States District Court for the District of New Jersey, at Transcript 4.9

CONSTITUTION OF CURTISS-WRIGHT EMPLOYEE BENEFIT PLAN

ARTICLE 1—PURPOSES

The Curtiss-Wright Employee Benefit Plan is established by Curtiss-Wright Corporation (hereinafter referred to as "the Company") for the purpose of providing for the payment of life, sick, accident, or other benefits contemplated by Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, to the employees of the Company or their dependents or designated and allowed beneficiaries, under the terms and conditions of such Plan as shall be adopted for the benefit of such employees, dependents or allowed beneficiaries by the Company.

ARTICLE 2—DEFINITIONS

1. *Company.* The term "Company" shall mean Curtiss-Wright Corporation.

2. *Employee.* The term "Employee" shall mean a person intended to be employed for one thousand or more hours in a calendar year or a period of twelve months from an employee's date of hire.

3. *Board of Directors.* The term "Board of Directors" shall mean the Board of Directors of the Company.

4. *Effective Date.* The term "Effective Date" shall mean September 1, 1976.

5. *Employer.* The term "Employer" shall mean the Company and any Subsidiary which shall, with the consent of the Board of Directors, elect to participate in the Plan.

6. *Internal Revenue Code.* The term "Internal Revenue Code" shall mean the Internal Revenue Code of 1954, as amended or superseded.

7. *Participant.* The term "Participant" shall mean an employee who shall have been designated to participate in a Plan, with respect to such Plan.

8. *Plan.* The term "Plan" shall mean a plan or plans adopted by the Company for the benefit of Employees of the Employer.

9. *Subsidiary.* The term "Subsidiary" shall mean any company a majority of the voting power and of the equity of which is owned, directly or indirectly, by the Company.

10. *Trust, Trust Fund and Fund.* The terms "Trust", "Trust Fund", and "Fund" shall mean a trust established by the Board of Directors to hold funds for the purpose of providing benefits payable under the Plan.

11. *Trustee(s).* The term "Trustee" or "Trustees" shall mean the party or parties appointed by the Board of Directors to manage the funds of any Trust.

12. *Constitution.* The term "Constitution" shall mean this document.

ARTICLE 3—ADOPTION OF PLAN AND CONTRIBUTIONS

1. *Adoption of Plans.* The Company, may from time to time adopt plans providing for the payment of life, sick, accident, or other benefits to employees of the Company or their dependents or allowed designated beneficiaries.

2. *Employer Contributions.* To the extent required under the terms of the Plan, the Employer shall make contributions to the Trust which together with Participant contributions are necessary to maintain such Plan on a sound actuarial basis and to support the benefits provided thereunder.

3. *Participant Contribution.* Each participant in this Plan shall make contributions required under the terms of the Plan.

ARTICLE 4—ADMINISTRATION

1. *Authority.* The general administration of the Plan shall be placed in a committee (hereinafter referred to as the "Committee") selected by the Company. The Committee may take such actions as is not inconsistent with the Plan; and enter into all such agreements and insurance policies as shall be deemed necessary or advisable by the Committee in connection therewith. The determination of the Committee as to any disputed question shall be conclusive.

2. *Actuarial Assumptions.* The Committee shall adopt from time to time such morbidity and mortality tables and such rate or rates of regular interest, compounded annually, as may be used in all actuarial calculations required in connection with any Plan. The actuary designated by the Committee shall make periodic actuarial reviews of the Fund and shall certify to the Committee the reasonableness and adequacy of the rates of contributions to the Plan.

3. *Powers.* The Company may appoint one or more committees with such powers as it shall determine; may authorize any agent to execute or deliver any instrument or make any payment on its behalf; and may employ agents to provide for such clerical, accounting, and actuarial services as it may require in carrying out the provisions of the Constitution or the Plan. The Committee may from time to time consult with counsel, who may be counsel for the Company, and shall be fully protected from any loss resulting from reliance upon such advice of counsel in respect of legal questions.

4. *No Compensation or Bonding.* No Committee member shall receive any compensation for services rendered, and no bond or other security need be required of such employee in such capacity in any jurisdiction.

ARTICLE 5—TRUST FUND

1. *General.* The Trust Fund shall be administered by the Trustee in accordance with the provisions of the agreement establishing the Trust.

2. *Establishment of Trust.* The Company shall establish a Trust to provide the benefits under the Plan adopted. All contributions by the Company and Participants shall be paid to the Trustee of the Trust for use in providing benefits and paying expenses not directly paid by the Company. Neither such contributions nor any investment earnings thereon shall be returned to the Company or otherwise used or diverted for purposes other than for the exclusive benefit of employees, dependents or allowed beneficiary and for the payment of expenses, prior to the satisfaction of all liabilities with respect to them, except in the event of an error in computation resulting in overpayment of a contribution by the Participants or Employers.

3. *Qualification of Trust or Trusts.* Since it is the intention of the Company that the Trust created qualify under Section 501(c)(9) of the Internal Revenue Code, the Company shall seek on behalf of the Trust a determination by the Internal Revenue Service that such Trust is exempt under Section 501(c)(9) of the Internal Revenue Code. In the event that such exemption is denied, such Trust shall be terminated and any contributions made shall be returned to the Company and Participants who shall have made such contributions.

ARTICLE 6—AMENDMENT

1. *General.* The Company reserves the right at any time and from time to time to modify or amend, in whole or in part, any or all of the provisions of the Plan. No such modification or amendment shall make it possible for any of the funds of the Trust established under the Plan adopted by the Company to be used for or diverted to purposes other than for the exclusive benefit of employees, their dependents, or their

allowed beneficiaries and expenses, prior to satisfaction of all liabilities with respect to them.

2. *Conformity with Law.* Since it is contemplated that the terms of the Constitution and of the Plan adopted by the Company shall at all times be and remain such as to (a) qualify them under the provisions of Section 501(c)(9) of the Internal Revenue Code and to render the contributions, if any, of the Company thereunder deductible under Section 162 of the Internal Revenue Code; and (b) comply with the provisions of any and all applicable and valid federal, state and local laws, ordinances, regulations, and rules, the Company reserves the right to amend the Constitution in any respect appropriate to make it conform with the requirements of the Internal Revenue Code or such laws, ordinances, regulations, or rules. Such amendment may be made effective as of the date of approval in writing or may be made effective retroactively or prospectively.

ARTICLE 7—TERMINATION

1. *Termination by Company.* The Company reserves the right to terminate the Plan established hereby for any reason at any time. In case of termination, the Fund under the Plan shall be used for the exclusive benefit of employees, their dependents, and their allowed beneficiaries as of the time of such termination, except that funds in a Trust not required to satisfy all liabilities of the Fund for benefits and expenses because of an erroneous computation shall be returned to the Company and Participants in proportion to the amounts each such contributor shall have contributed with respect to such Trust.

2. *Termination for Other Reasons.* The Constitution and the Company's liabilities under the Plan shall terminate upon the Company's legal dissolution, adjudication as a bankrupt, making of a general assignment to and for the benefit of creditors.

ARTICLE 8—GENERAL

1. *Participation by Subsidiaries.* With the consent of the Board of Directors, any Subsidiary of the Company may elect to participate in the Plan upon appropriate action by such Subsidiary necessary to adopt the Plan.

2. *Qualification.* The Company shall submit the Plan to the Internal Revenue Service together with the Trust adopted by the Company with a request for a determination as to the qualification of the Plan under Section 501(c)(9) of the Internal Revenue Code. In the event that the Internal Revenue Service determines that the Trust does not so qualify, the Trust shall be terminated.

3. *Inurement of Net Earnings.* No part of the net earnings of Trust under a Plan adopted by the Company shall inure to the Company except as provided by Article 7.

4. *Governing Law.* The validity of the Plan adopted by the Company shall be construed in accordance with the laws of the State of New Jersey or federal law whichever is applicable and shall be regulated and administered under the laws of the State of New Jersey. In the event that any provision of the Plan shall be held invalid or illegal for any reason, such determination shall not affect the remaining provision of the Plan adopted by the Company or any Trust under a Plan adopted by the Company, but the Plan shall be construed and enforced as if such invalid or illegal provision had never been included.

5. *Limitation of Liability.* Subject to provisions of any agreement entered into by the Company, liability of the Company to provide for payment of benefits to persons eligible to receive the same under the provisions of the Plan shall be limited to the assets of the Plan set aside for the payment of benefits under such Plan.

6. *Titles and Headings.* Titles of articles and headings of sections are for general information only and the Plan shall not be construed by reference to such titles and headings.

7. *Masculine and Feminine Words.* Words used in the masculine shall be read and construed in the feminine where they would so apply.

8. *Singular and Plural Words.* Wherever required, the singular of any word used in the Constitution shall include the plural and the plural may be read in the singular.

9. *Spendthrift Clause.* With the exception that an assignment of benefits for medical services actually performed may be made in accordance with the procedures approved by the Company or the Insurer or provided by the Plan, no benefit under such Plan adopted by the Employer shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge and any attempt to do so shall be void, except as specifically provided in any such Plan. No benefit shall be in any manner liable for or subject to garnishment, attachment, execution, or levy, or subject to the debts, contracts, liabilities, engagements, or torts of the person entitled to such benefit. In the event that the Committee shall find that any Participant, dependent, or allowed beneficiary under any Plan has become bankrupt or that any attempt has been made to anticipate, alienate, sell, transfer, sign, pledge, encumber, or charge any of his benefits under such Plan except as specifically provided therein then such benefits shall cease and terminate. In that event, the Committee shall, in its discretion, hold or apply to the same to, or for the benefit of, such Participant, dependent, or allowed beneficiary, his spouse, children, parents, or other blood relatives, or any of them.

CURTISS-WRIGHT CORPORATION

By CHARLES EHINGER

ATTEST: Title Executive Vice President

FRANCIS FALLON, Secretary

Dated March 1, 1977

JOINT EXHIBIT 111

Admitted into evidence September 26, 1990, in the United States District Court for the District of New Jersey, at Transcript 3.4

Form 5500

Annual Return/Report of Employee Benefit Plan

1982

* * * * *

1 (a) Name of plan sponsor (employer if for a single employer plan)

CURTISS-WRIGHT CORPORATION

ONE PASSAIC STREET

WOOD-RIDGE, NEW JERSEY 07075

1 (b) Employer identification number
13 0612970

1 (c) telephone number of sponsor
(201) 777-2900

1 (d) If plan year changed since last return/report, check here ☐

1 (e) Business code number
3725

* * * * *

3 Is the name, address and identification number of the plan sponsor and/or plan administrator the same as they appeared on the last return/report filed for this plan? ☒ Yes ☐ No. If "no," enter the information from the last return/report in (a) and/or (b).

(a) Sponsor ▶ _____

(b) Administrator ▶ _____

4 Check appropriate box to indicate the type of plan entity (check only one box):

(a) ☐ Single-employer plan

(b) ☒ Plan of controlled group of corporations or common control employers

(c) ☐ Multiemployer plan

(d) ☐ Multiple-employer-collectively bargained plan

(e) ☐ Multiple-employer plan (other)

(f) ☐ Group insurance arrangement (of welfare plans)

5 (a) (i) Name of plan ▶ Curtiss-Wright Corporation Employee Benefit Plan

(b) Effective date of plan September 1, 1976

(c) Enter three-digit plan number 5 0 8

* * * * *

Date ▶ 8-15-83

Signature of employer/plan sponsor ▶ /s/ J.F. Staubach, Controller

Date ▶ _____

Signature of employer/plan sponsor ▶ _____

* * * * *

8 Plan amendment information (welfare plans do not complete (b)(ii)):

(a) Was any amendment to this plan adopted in this plan year? No

* * * * *

JOINT EXHIBIT 119, BENEFITS BOOKLET
Admitted into evidence
September 26, 1990,
in the United States District Court for
the District of New Jersey, at Transcript 3.4

[LABEL:] Wesley L. Losson
180 Pines Lake D
Wayne, N.J.
07470

CURTISS-WRIGHT CORPORATION

[handwritten note:] After you retire pg 31

Exempt Health Protection Coverage

Full-time, Exempt, Salaried Employees of Curtiss-Wright Corporation and Some of Its Subsidiaries

[handwritten note:] Received 8/20/83 w/DuBois' letter of 8/18/83 after completion of Prudential Insurance policy and after execution of Blue Cross/Blue Shield contract

Exempt Health Protection Coverage

Full-time, Exempt, Salaried Employees of Curtiss-Wright Corporation and Some of Its Subsidiaries

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INTRODUCTION

Your Health Care Plan has been designed to provide valuable protection for you and your family against the rising cost of medical care.

The Plan pays benefits for a broad range of medical services and supplies, both in and out of the hospital. The Hospital Medical portion of your Health Care Plan is in two parts; the BASIC BENEFITS PLAN (i.e., Basic Hospital Plan and Basic Surgical-Medical Plan) and the MAJOR MEDICAL PLAN. All eligible Hospital/Medical expenses are first considered for benefits under the BASIC PLAN. After the BASIC benefit is determined, then any remaining expenses are considered for benefits under the MAJOR MEDICAL PLAN.

* * * *

COORDINATION OF BENEFITS UNDER THE HEALTH CARE PLAN

The purpose of our Health Care Plan is to help you pay for those costs that you or your dependents actually incur for necessary medical services and supplies. Sometimes because individuals are protected by more than one group plan, the total benefits may exceed the actual expenses. Therefore your Plan has a Coordination of Benefits (COB) feature which combines it with any coverage you may have under other group plans and is designed to guard against overpayments.

The term "group plans" means medical or dental insurance which provides:

- Coverage under a group insurance plan made available by an employer other than Curtiss-Wright including prepayment plans such as Health Maintenance Organization (HMO), group or association coverage for an employee or a dependent made available by an employer. Under some portions of your Plan, student coverage obtained through an educational institution is also considered a group plan,

AND . . .

- Coverage required by statutes such as Automobile No-Fault Laws (in states where coordination is permitted).

It does not mean any personal health care policy you may have, and therefore, COB does not apply to these policies.

When a claim is made, the primary plan pays its benefits without regard to any other plans. The secondary plans adjust their benefits so that the total benefits available will not exceed the allowable expenses. No plan pays more than it would without the coordination provision.

A plan without a coordinating provision is always the primary plan. If all plans have such a provision: (1) the plan covering the patient directly, rather than as an employee's depen-

dent, is primary and the other is secondary; (2) if a child is covered under both parents' plans, the father's is primary (if the parents are divorced or legally separated, the Plan of the parent who has assumed financial responsibility for the dependent child(ren) is primary); (3) if neither (1) nor (2) applies, the plan covering the patient longest is primary.

When ours is the secondary plan and its payment is reduced to consider the primary plan's benefits, a record is kept of the reduction. This amount will be used to increase our Group Plan's payments on the patient's later claims in the same calendar year to the extent there are allowable expenses that would not otherwise be fully paid by our Group Plan and the others.

CONTINUATION OF HEALTH CARE BENEFITS

If You Become Disabled—If you become disabled and are collecting benefits under either the Short Term or Long Term Disability Plans, your Health Care coverage will continue, at no cost to you, provided you and your dependents were enrolled in the Health Care Plan prior to disability and provided the Group Coverage under this Plan remains in force.

If You Are Disabled When Group Coverage Terminates—If you, or an eligible dependent, are totally disabled and/or hospital confined on the date this Plan terminates, benefits will be continued for the person so disabled for a limited period of time. The following outlines the benefits that will be provided under this provision:

- **Blue Cross (Hospital) Benefits**—If a person covered by this Plan is receiving inpatient care in an approved hospital, (as defined on page 2 of this booklet) at the time Plan coverage terminates, hospital benefits will continue to be provided, to the extent available for that confinement, until discharge from the hospital.
- **Basic Surgical-Medical Benefits**—If coverage under this Plan terminates and a covered person is totally disabled on

the date of termination, coverage will be extended under the Basic Surgical-Medical Plan until the earlier of three months from the date of group coverage termination, or recovery.

- **Major Medical Benefits**—In the event of a covered person's total disability on the date coverage under this Plan terminates, coverage will be extended until the earlier of the end of the calendar year following the calendar year in which disability occurred, or recovery.

The extended benefits will apply only to expenses incurred as a result of the condition that caused the total disability.

If You Die—If you die while an active employee, Health Care coverage for your dependents will continue for 180 days from the date on which you died provided your dependents elect to pay the monthly Health Care premium. Your dependents will then have 31 days to convert to an individual policy of health insurance.

After You Retire—During your retirement, as long as the Plan is in operation, you and your covered dependents will have the same Health Care benefits, at no cost to you, with the exception of dental, major medical and prescription drug plans.

However, the Plan will not duplicate any benefits to which you are entitled under Medicare. Once you have attained the age of 65 or become disabled, the Plan will assume that you are covered by both Part A and Part B of Medicare and will pay only the Complimentary Coverage (see section entitled, "Medicare Benefits For The Disabled and Those Age 65 or Over").

If you die during retirement, your dependents' coverage will continue for 180 days from the date on which you died provided your dependents elect to pay the monthly Health Care premium. Your dependents will then have 31 days to apply for an individual policy with either the Prudential Insurance

Company or the Blue Cross Plan or Claims Service Organization.

TERMINATION OF HEALTH CARE BENEFITS

- Coverage for you and your dependents terminates on the last day of the month in which you cease to be an eligible employee of Curtiss-Wright or any of its named subsidiaries which are covered under this Plan.
- Coverage for dependents will cease when he or she no longer meets the definition of an "Eligible Dependent" as described on page 3 of this booklet.
- All coverage under this Plan will cease upon discontinuance of the Plan for any reason.
- Coverage under this Plan will cease for retirees and their dependents upon the termination of business operations of the facility from which they retired.

CONVERSION OPTIONS AVAILABLE

If Plan coverage should terminate, you and your dependents may apply for an individual or family policy with the Claims Service Organizations (currently Blue Cross for hospital coverage and the Prudential Insurance Company of America for surgical-medical coverage) within 31 days following termination of coverage or as provided by law in your state.

When your child is no longer eligible for coverage as a dependent, he or she is responsible for taking prompt action to obtain separate enrollment. To assure uninterrupted protection, an application (or proof of permanent disability) should be sent directly to your Claims Service Organization within 31 days after the date on which your child's coverage terminates.

Your dependent child's coverage terminates on the last day of the month in which he or she attains 19 years of age or 25 (if

a full-time student in an accredited institution) or when you are no longer financially responsible for maintenance of the child.

MEDICARE BENEFITS FOR THE DISABLED AND THOSE AGE 65 OR OVER

When you and/or your spouse reach age 65, it is vital that you enroll for full Medicare coverage, both Parts A and B. Your Plan will assume that you are so enrolled and will not duplicate any benefits that are payable by Medicare whether you have full Medicare coverage or not. This also applies if you become eligible for Medicare at an earlier age because of disability.

Medicare Part A—This part covers hospital services while confined in a hospital and, after a hospital stay, for inpatient care in a skilled nursing facility and for care in your home by a home health agency.

Medicare Part B—This part of Medicare covers doctor's services. It also helps pay for out-patient hospital services and other medical services and supplies not covered by Medicare Part A.

If you are actively employed by the Company when either you and/or your spouse reach 65 years of age, Curtiss-Wright will reimburse you and/or your spouse for the quarterly Medicare Part B premiums provided you have applied for such coverage. See your local Personnel Office for further details.

DUAL CHOICE PLAN

Each year you will be given an opportunity either to retain your Curtiss-Wright coverage or to replace it with that of an approved Health Maintenance Organization (HMO) if available in your locality. However, in order to make such a choice, a contract must have been established between the Company and the HMO in the area in which you live.

If such an option is available to you—and you elect to choose such a plan for yourself and your dependents—the Company will pay the same amount toward the cost of this alternate medical coverage as it will for your Curtiss-Wright coverage. Any additional costs for such a plan—based on the enrollment cost established by that plan—will be paid by you through payroll deductions.

OTHER INFORMATION

The following information is provided to comply with the Employee Retirement Income Security Act of 1974:

OFFICIAL NAME OF PLAN	Curtiss-Wright Health Care Plan for Exempt Employees
TYPE OF PLAN	Welfare
PLAN YEAR	September 1-August 31
PLAN SPONSOR/ ADMINISTRATOR	Curtiss-Wright Corporation One Passaic Street Wood-Ridge, N.J. 07075 Phone: (201) 777-2900
AGENT FOR SERVICE OF LEGAL PROCESS	Same as above
CLAIMS SERVICE ORGANIZATIONS	The Prudential Insurance Company of America Newark, N.J. 07101 Blue Cross of New Jersey Newark, N.J. 07102 Prepaid Prescription Plans, Inc. Shrewsbury, N.J. 07701

PAYMENT OF BENEFITS	Same as above
PLAN IDENTIFICATION NUMBER	508 (Health Care Benefits)
EMPLOYER IDENTIFICATION NUMBER	13-0612970 Curtiss-Wright Corporation 11-1640651 Target Rock Corporation* 22-2377871 Curtiss-Wright Flight Systems, Inc.*
PLAN COSTS	Paid by Employer
CLAIM REVIEW PROCEDURES	If a hospital or surgical-medical claim is denied, the claimant or claimant's beneficiary, upon written request, is entitled to a review of the claim decision. Specific information regarding the procedure to be followed for requesting such a review can be obtained from your Personnel Department.

Who Insures the Plan:

The Health Care Plan is self-funded by the Company.

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* Subsidiary of Curtiss-Wright Corporation.

Plan Trustees:

The New Jersey Bank
One Garret Mountain Plaza
West Paterson, New Jersey 07424

How the Plans are Administered and Benefits Paid:

Through:

- An administrative services agreement with The Prudential Insurance Company of America, Home Office, Newark, New Jersey 07101 (Phone—201-877-6000) for Health Care Benefits for active and retired employees and their dependents.
- A National Account with Blue Cross of New Jersey, 33 Washington Street, Newark, New Jersey 07102 (Phone—201-456-2000) for Basic Hospital benefits for active and retired employees and their dependents.
- An administrative services agreement with Prepaid Prescription Plans, Inc., 20 White Road, Shrewsbury, New Jersey 07701 for Prescription benefits.

What Are Summary Plan Descriptions

These are the booklets which have been prepared to comply with the provisions of the Employee Retirement Income Security Act of 1974 and serve to outline the terms of the coverage available to you. The complete terms of the coverages are set forth in policies issued by the insurance companies that underwrite the insured benefits and in the plan documents of the other welfare and pension plans.

In case of conflict, the terms of the group insurance policies and plan documents will prevail.

As a participant in the Curtiss-Wright Employee Benefit Program, you have always had a broad range of rights. The Employee Retirement Income Security Act of 1974 (ERISA) formalized this fact and affirms two major concepts:

1. Regular Opportunity for Information on Benefits:

You will receive—

- A Summary Plan Description which explains the major provisions of our various coverages.
- A summary of the Plans annual financial reports.
- A written explanation of why any claim for a welfare benefit is denied in whole or in part and you may request to have such claim reviewed.

You may request:

- To examine, without charge, at the Plan Administrator's office, all relevant plan documents, insurance contracts and items pertaining to the benefit plans which have been filed with the Department of Labor.
- Copies of the above items by writing to the Plan Administrator. A reasonable charge can be made for such copies.

2. Responsible Administration of Benefits:

- Fiduciaries, the people responsible for the Plan's operation, must act prudently and solely in your best interest as a Plan participant.
- No one, including your employer, may take any action or otherwise discriminate against you solely for the purpose of preventing you from obtaining any welfare or pension benefits or from exercising your rights under ERISA.
- A Plan participant may file suit in a federal court for cause, such as failure of the Plan Administrator to provide any of the information described in 1 above, or breach of responsibility by a Plan Fiduciary. A person being sued may have the right to countersue. The court decides who pays your court costs and may require the unsuccessful party to pay all legal costs.

- If you have any questions regarding your rights, you should contact your Plan Administrator. You may also contact an area office of the U.S. Labor-Management Services Administration, Department of Labor.

Plan Continuation—The Company expects and intends to continue this Plan indefinitely but reserves the right to end or amend it.

NOTE: This booklet represents a summary of the main provisions of the Health Care Plan for exempt Curtiss-Wright employees. If this summary disagrees with the actual Plan documents, they will govern all matters. Copies of the Plan documents are on file with the Plan Administrator (and your Personnel Department) and may be examined upon request during normal business hours.

Although the Company expects this Plan to continue in its present form for an indeterminable period, this Plan is not a vested Plan and as such is subject to modification or termination by the Company at any time.

JOINT EXHIBIT 133

Admitted into evidence September 26, 1990, in the United States District Court for the District of New Jersey, at Transcript 3.4

CURTISS-WRIGHT CORPORATION

ONE PASSAIC STREET • WOOD-RIDGE, NEW JERSEY 07075

Richard P. Sprigle
Executive Vice President

November 23, 1983

TO: Wood-Ridge Pensioners

SUBJECT: *Termination of Post Retirement Health Care Coverage*

Dear Pensioner:

As you may have previously been informed, the Corporation announced on September 28, 1983 that all manufacturing operations of the Wood-Ridge Facility will be phased out by November 30, 1983. A recent U.S. Air Force decision to phase out the J-57 engine overhaul program reduced the Wood-Ridge Facility to a non-viable operation.

Since there will no longer be continuing manufacturing operations at Wood-Ridge to support any on-going expenses associated with that Facility, we must advise you that your Curtiss-Wright sponsored and paid post-retirement hospital and medical coverage will be terminated effective at 12:01 A.M., December 1, 1983. *Your monthly retirement income benefits under the Curtiss-Wright Pension Plan will not be affected by this termination, nor will your death benefit under the Pension Plan. Your right to convert your existing health care coverage to private health care coverage will not be affected.*

To assist you in making your decision as to health care coverage to replace the coverage being terminated, the Company compared the premium rates that Blue Cross/Blue Shield

would currently charge a group consisting of you and your fellow retirees for their health care insurance, as contrasted to the existing premium rate for conversion to comparable coverage with Blue Cross and Blue Shield on an individual basis. When Blue Cross and Blue Shield supplied its rates for the converted policy, it was obvious that in a majority of cases the cost to you would be significantly less if you changed over to the conversion policy, rather than participated in your own retiree group.

We are therefore suggesting that if you desire health care protection for yourself and your eligible dependents after November 30, 1983, you should exercise your conversion privilege under the existing group plan, in the manner explained below. A converted policy is an individual plan of insurance whereby you will be responsible for paying the premium on a *quarterly* basis to Blue Cross and Blue Shield. We are advised that the following are the *quarterly* premium rates that will be in effect for the period starting December 1, 1983, depending upon your age and dependent status. The rates are:

QUARTERLY PREMIUMS

Under Age 65	Blue Cross (Hospital)	Blue Shield (Medical/Surgical)	TOTAL
Single	$114.39	$30.03	$144.42
Husband & Wife	215.67	78.09	293.76
Parent & Child	159.06	55.11	214.17
Husband, Wife & Child(ren)	215.67	79.71	295.38

Age 65 & Over (Supplements Medicare)	Blue Cross & Blue Shield TOTAL
Single	$ 72.18
Husband & Wife, Both 65 or over	144.36
Husband & Wife, 1 over, 1 under 65	216.60
Husband & Wife, both 65 or over with Child(ren)	288.78

	Blue Cross & Blue Shield TOTAL
Age 65 & Over (Supplements Medicare)	
Husband & Wife, 1 over, 1 under 65 with Child(ren)	361.02
1 Parent Over 65 with Child(ren)	216.60

You will be directly billed by Blue Cross/Blue Shield of New Jersey for this converted coverage. At the time you receive the bill, you will also receive an enrollment form and a statement explaining the converted coverage. If you do not wish to purchase the coverage, you should not pay this bill. If you do wish to purchase the coverage, it is important for you to complete and return the enrollment form directly to Blue Cross/Blue Shield of New Jersey along with your first quarterly premium payment within 31 days from the date that you are billed by Blue Cross/Blue Shield.

PLEASE NOTE:

You are not required to submit any medical evidence of your insurability if you enroll in the converted plan within the 31 day conversion period.

Your coverage will be effective as of December 1, 1983, so there will be no lapse of coverage between the terminated group coverage and your new individual converted policy.

If you or an eligible dependent are totally disabled or hospitalized as of November 30, 1983, you may have certain transitional rights under the Curtiss-Wright group health care coverage. In this regard, contact the Corporate Benefits Department of Curtiss-Wright Corporation for further details.

If you are under age 65, you will be given the opportunity by Blue Shield to purchase major-medical coverage for an additional premium. This is entirely separate from the conversion privilege. It is an additional option that is being offered to you directly by Blue Shield. If you desire the major-medical

coverage, Blue Shield requires that you also submit a medical questionnaire along with your application. Whether or not you are able to submit satisfactory evidence of insurability for major-medical coverage will have no bearing on your right to receive the converted hospital and medical/surgical coverage.

You are, of course, free to explore any other available alternative means of providing health care coverage for you and your family. However, if you so do, we urge you to act promptly so as to be in a position to exercise the conversion privilege outlined above on a timely basis.

Very truly yours,

/s/ RICHARD P. SPRIGLE
Richard P. Sprigle

JOINT EXHIBIT 137

Admitted into evidence September 26, 1990, in the United States District Court for the District of New Jersey, at Transcript 3.4

Form 5500
Annual Return/Report of Employee Benefit Plan
1983

* * * * *

1 (a) Name of plan sponsor (employer if for a single employer plan)
CURTISS-WRIGHT CORPORATION

Address:
P.O. BOX 810

City or Town, State and ZIP code
HASBROUCK HEIGHTS, NEW JERSEY 07604

1 (b) Employer identification number
13 0612970

1 (c) telephone number of sponsor
(201) 777-2900

1 (d) If plan year changed since last return/report, check here ☐

1 (e) Business code number
3725

* * * * *

3 Is the name, address and identification number of the plan sponsor and/or plan administrator the same as they appeared on the last return/report filed for this plan? ☐ Yes ☒ No. If "no," enter the information from the last return/report in (a) and/or (b).

(a) Sponsor ▶ Curtiss-Wright Corp., 1 Passaic St., Wood-Ridge, N.J. 07075

(b) Administrator ▶ _____

4 Check appropriate box to indicate the type of plan entity (check only one box)

(a) ☐ Single-employer plan

(b) ☒ Plan of controlled group of corporations or common control employers

(c) ☐ Multiemployer plan

(d) ☐ Multiple-employer-collectively bargained plan

(e) ☐ Multiple-employer plan (other)

(f) ☐ Group insurance arrangement (of welfare plans)

5 (a) (i) Name of plan ▶ Curtiss-Wright Corporation Employee Benefit Plan

(b) Effective date of plan
September 1, 1976

(c) Enter three-digit plan number
5 0 8

* * * * *

Date ▶ 9-10-84

Signature of employer/plan sponsor ▶
/s/ Lester E. Davis Ass't Sec'y

Date ▶ _____

Signature of employer/plan sponsor ▶
_____

* * * * *

8. Plan amendment information (welfare plans do not complete (b)(ii)):

(a) Was any amendment to this plan adopted in this plan year? No

* * * * *

ORAL ARGUMENT ON DEFENDANT'S MOTION UNDER RULE 41(b)

Held September 26, 1990

In the United States District Court
for the District of New Jersey

FRANK C. SCHOONEJONGEN, *et al.*, Plaintiffs,

—vs—

CURTISS-WRIGHT CORPORATION, Defendant.

Before: Honorable John W. Bissell,
United States District Judge at Newark, New Jersey.

Appearances:

Lewis, Greenwald, Kennedy, Lewis,
Clifton & Schwartz, Esqs., By:
Everett E. Lewis, Esq. and Ira Cure, Esq.,
Attorneys for Plaintiffs

Carpenter, Bennett & Morrissey, Esqs.,
By: Rosemary Alito, Esq. and Kevin Duffy, Esq.,
Attorneys for Defendant

Proceedings

* * * *

Argument of Counsel

* * * *

By: Judge Bissell

[3.49] Q: Ms. Alito, if I may, on examining the forms, the 5500's for the calendar year 1983, which is exhibit—Joint Exhibit 137, I note entries thereon which indicate that in that calendar year that plan, according to the report, was neither amended nor **[3.50]** terminated.

Is there any particular reason for that?

MS. ALITO: As I stated toward the end of my argument, your Honor, Curtiss-Wright didn't consider this change in language in the 1983 summary plan description to be an amendment to the plan.

It considered it to be a clarification of the prior language with respect to the classes of employees and it thought it had reserved this right to itself throughout and had, in fact, in practice, terminated benefits in connection with the series of other plant closings, so it did not consider this to be an amendment as such to the plan but, rather, a clarification of the language.

* * * *

TESTIMONY OF NOEL ENGLAND

Held September 28, 1990

In the United States District Court
for the District of New Jersey

[caption omitted in printing]

Before: Honorable John W. Bissell,
United States District Judge at Newark, New Jersey.

Appearances:

Lewis, Greenwald, Kennedy, Lewis,
Clifton & Schwartz, Esqs., By:
Everett E. Lewis, Esq. and Ira Cure, Esq.,
Attorneys for Plaintiffs

Carpenter, Bennett & Morrissey, Esqs.,
By: Rosemary Alito, Esq. and Kevin Duffy, Esq.,
Attorneys for Defendant

Newark, New Jersey

Proceedings

* * * *

[4.45] NOEL ENGLAND, having been duly sworn, testified as follows:

By: The Clerk

Q: State your name for the record and spell it.

A: Noel, N-O-E-L, England, E-N-G-L-A-N-D, like the country.

* * * *

Cross-Examination

[4.84] BY MR. KENNEDY:

Q Mr. England, is it your contention that there is something in Joint 45 that advises employees that their post-retirement health insurance benefits would terminate if their facility closed?

Would you like to review it?

A (Witness reviews booklet.)

It seems to me we generally had some kind of a statement, the legal department would advise us as to what went into the text, and I don't know where it normally is.

Q Take your time.

If it's your understanding that Curtiss-Wright had one prior to 1983, why don't you take a look at that [4.85] booklet, in whatever detail you need, to answer that question.

A I assumed it would be in the rear.

MS. ALITO: Your Honor, I object to the witness being asked to do it, because he already testified that he has no independent recollection of this specific booklet, and it would have been one of the individuals who reported to him, his benefits director, that would have been responsible for it.

THE COURT: This man was placed on the stand to testify to the scope of benefits, and it's within the proper scope of direct.

A I see on Page 33 there is a termination of insurance under the heading "General Information."

THE COURT: Speak louder.

THE WITNESS: Page 33 of the booklet under the caption of "General information," there is a sub-heading saying "Termination of Insurance."

Q Read it into the record for us.

A The insurance for yourself and your dependents will terminate if you cease to be an eligible employee or if the group insurance plan is discontinued. A dependent's insurance will terminate when he is no longer an eligible dependent.

Q Is it your understanding that that language advised [4.86] employees if their facility closed, their post-retirement insurance benefits would be terminated?

A I don't know what they—we changed this language over the years. There were times it seemed ambiguous, and we kept trying to, as we did in all of this, to make sure it read properly.

But we certainly intended to advise people that benefits would terminate if a facility was closed down.

Q Isn't it a fact that the first time anybody from Curtiss-Wright Corporation, exempt or nonexempt employee, received written notification of the fact that their post-retirement insurance would conclude if the term—if the facility terminated, was in April of 1983?

A Well, we gave out a letter at that time talking very specifically about the benefits being terminated, as I recall.

THE COURT: His point is: Was that the first time in your recollection there was any such explicit written materials circulated?

THE WITNESS: This booklet here?

THE COURT: No. The letter of April of '83.

THE WITNESS: I think the booklets always contain a provision. I don't remember what it would have said.

Q That is my question.

To use your recollection, either on that booklet or [4.87] some other organization to tell us whether you recall Curtiss-Wright advising its employees, exempt and nonexempt, that

their post-retirement insurance benefits would terminate if their facility closed?

A I don't recall.

I know that the legal department would give us wording for these booklets, and I don't recall what the wording was.

* * * *

TESTIMONY OF RICHARD A. DuBOIS

Held October 1, 1990

In the United States District Court
for the District of New Jersey

[caption omitted in printing]

Before: Honorable John W. Bissell,
United States District Judge at Newark, New Jersey.

Appearances:

Lewis, Greenwald, Kennedy, Lewis,
Clifton & Schwartz, Esqs., By:
Everett E. Lewis, Esq. and Ira Cure, Esq.,
Attorneys for Plaintiffs

Carpenter, Bennett & Morrissey, Esqs.,
By: Rosemary Alito, Esq. and Kevin Duffy, Esq.,
Attorneys for Defendant

Newark, New Jersey

Proceedings

* * * *

[5.3] RICHARD A. DuBOIS, having been duly sworn, testified as follows:

Direct Examination

BY: MS. ALITO

* * * *

[5.12] Q Now, Mr. Du Bois, if an employee came into your office, as corporate director of benefits of Curtiss-Wright; asked to see the plan documents for the medical health insurance plan, what would you say to that employee and what would you show him or her?

A Well, first, I would have to imagine they would come into my office, they would have a specific question in mind, be it a claim or just a question about coverage, it's a provision of the plan. Most likely, I would start with the summary plan description because that's what the employees are most familiar with, that's what they receive; that's what they read.

This is what they perceive to be their benefits are as [5.13] outlined in that booklet. If it required anything further as to documentation, they'd have full access to all documents in the office, that would have included the insurance contracts and the trustee agreements.

* * * *

[5.20] Q I'm going to show you now a document marked as Joint Exhibit 119 and ask you if you recognize that?

A I do.

Q What is that?

A This is the 1983 version of the exempt health coverage plan for exempt employees of Curtiss-Wright.

Q This is the booklet we were just discussing you worked on?

A It is.

Q Would you turn to page 32 of that booklet, please.

Look under the heading of "Termination of Health Care Benefits."

Did you play any part in drafting that language?

A Yes, I did.

Q And did you draft—did you include that language or similar language in your first draft of the booklet in 1981?

A To the best of my recollection I did, yes.

Q At the time that you drafted that language in 1981, were you aware of any plans to close the Wood-Ridge facility?

A No, ma'am I was not.

Q When did you become aware of the fact the Wood-Ridge facility was going to close?

A Towards the latter part of 1983, September perhaps, August.

Q Now, this—this booklet J-119, the 1983 summary plan [5.21] description, was its use limited to the Wood-Ridge facility?

A No, no, not the exempt booklet, used in Wood-Ridge but not exclusively.

Q Were there other facilities in which this was used?

A Yes.

Q Now, if you look again under the heading, "Termination of Health Care Benefits," on page 32, one of the items, the third item under that heading is—no, the fourth item under that heading, it says:

"Coverage under this plan will cease for retirees and their dependents on the termination of business operations of the facility from which they retired."

Did you draft that language?

A I did, yes.

Q When you drafted that language did you consider that to be a change in Curtiss-Wright policy?

A No, ma'am, I did not.

Q Did you consider it to be a clarification?

A I did.

Q And why is that?

A Well, again if we look at the predecessor document, the SPD of 1976—although I could interpret the language of termination in that SPD to mean exactly what this one says, it would I think, be questionable to, if I may, a nonprofessional benefits person, to elicit that same interpretation.

* * * *

[5.22] Q Now, Mr. Du Bois, you mentioned a plant closing of 1980, the Marquette facility.

Did that play any part in your drafting of this more specific language on page 32?

A It did.

Q Can you tell me how that was involved, how the Marquette situation influenced your drafting of this booklet?

A When the plant was closed I was required to go to, I believe it was Superior Court in Cleveland, Ohio, ready to give testimony. I never did have to but I was there, ready to give testimony.

I saw some of the proceedings, some of the confusion and overheard some of the confusion of the people involved in that situation out there. I, at that point, felt it was time because we were about to prepare a new summary plan description, to make—to the extent possible, to make certain that this kind of confusion if it ever occurred again, at least it wouldn't because of ambiguous wording in any summary plan description document that I was responsible for.

* * * *

[5.78]

REDIRECT EXAMINATION

BY: MS. ALITO

* * * *

THE COURT: You testified that you believe that the reference in J-119 specifically toward termination of benefits upon a plant's closure was not a formal amendment of the plan at such time but merely a more specific reiteration of policy?

THE WITNESS: Yes.

THE COURT: During your position Curtiss-Wright do you have a memory of there being a formal recommendation [amendment] to the plan?

THE WITNESS: On this issue, no, sir.

THE COURT: On any other you recall.

THE WITNESS: No, not that I can recall.

THE COURT: Do you have a recollection what mechanism was to be employed in terms of effectuating an amendment by the employer of such plan?

THE WITNESS: Not—not an official amendment. Again in going back to the information I did review historically, there had been some documents already distributed to employees that did contain this language. Others did not. Putting it all [5.79] together, conferring with the legal department, people in the human resources department, to me, became clearly the intent of the company to say the company did have right to terminate.

THE COURT: You might have misunderstood my question.

I'm wondering if you knew what the mechanism was for a formal amendment if one were to have be put through either on this particular subject or any other subject of the health plan?

THE WITNESS: It would have been something I would have worked through the legal department to the executive committee. They would have given official approval on this.

THE COURT: Gone as high as the board of directors.

THE WITNESS: Perhaps not board of directors but executive board, chaired by the executive vice-president.

* * * *

[5.84]

RECROSS EXAMINATION

BY: MR. KENNEDY

* * * *

You, in reference to the amendment procedure for the health plans maintained by Curtiss-Wright, referred to an executive committee chaired by the vice-president?

A Yes.

Q Can you tell us who the members of that executive committee are [o]r were I should say in and around the '80 to '83 time period?

A In the framework of that kind of a decision that would have been a committee consisting of the executive vice-president, probably labor counsel, perhaps general counsel, executive director of labor relations or industry relations, I should say, and myself.

Q And the role of that committee would have been to pass upon the appropriateness of any amendments contemplated into the plan?

A That would be the approach this committee would take, yes.

Q How would the decisions of that committee be reflected, minutes of the meeting be adopted or memorandum be authored?

A I would imagine so. We did not have many of those types of committee meetings but I would imagine there certainly would be a record of the meeting being held whatever was adopted, yes.

[5.85] Q And just so the record is clear, no such commission letter, no such memorandum was authored with respect to this decision to include the termination language in the 1983 summary plan description for the exempts. Is that correct?

A I don't know that's necessarily true. There were various disciplines in the organization in the formation of that. I did draft it after conference with the legal department. I'm certain the executive vice-president was aware of that language as it was in draft form.

Although it might not been an official committee action, again I did not think it would be necessary to have committee action because we were trying to clarify what we believe policy to have been right along.

Q My question for the record, this wasn't because you didn't think this was applied to any official committee action?

A That's correct.

* * * *

TESTIMONY OF AARON J. CARR

Held October 1, 1990

In the United States District Court
for the District of New Jersey

[caption omitted in printing]

Before: Honorable John W. Bissell,
United States District Judge at Newark, New Jersey.

Appearances:

Lewis, Greenwald, Kennedy, Lewis,
Clifton & Schwartz, Esqs., By:
Everett E. Lewis, Esq. and Ira Cure, Esq.,
Attorneys for Plaintiffs

Carpenter, Bennett & Morrissey, Esqs.,
By: Rosemary Alito, Esq. and Kevin Duffy, Esq.,
Attorneys for Defendant

Newark, New Jersey

Proceedings

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[5.110] AARON J. CARR, having been duly sworn, testified as follows:

Direct Examination

BY: MS. ALITO

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[5.113] Q Can you—let's take the constitution. Can you tell us where the constitution, that section on amendments or termination is?

A Well, section for amendment is Article VI. The section for **[5.114]** termination is Article VII.

Q And did you in those sections intend to reserve to Curtiss-Wright the intent, your right to amend or terminate?

A Oh, yes.

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A It was my understanding that we would have the unfettered right to control these plans whether to amend it, to terminate it, we reserved this right to ourselves. To control it absolutely.

Q Did you express any limitations on the right to amend either the trust agreement or the constitution?

A Limitations, no, not that I'm aware of.

How we—the employee benefit trust agreement is a little bit different because I think, for amendment or termination, that had to go through the board of directors.

Other than that, I don't remember cutting short our reservation at all to amend or to terminate.

Q Now, Mr. Carr, what was the purpose of the constitution of the Curtiss-Wright Employee Benefit Plan?

A It was a document to help formulate what the plan was in conjunction with the booklets or the contracts which describe **[5.115]** the benefits.

We did not want to put the benefits into the constitution for the reason that we didn't want to change the constitution every time we changed they benefits.

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[5.116] Q Did there come a time when you were called upon to take part in the preparation of booklets like that?

A Yes, summary plan descriptions, yes.

Q When was that?

A Well, during Mr. DuBois' tenure he was trying to get out a booklet and I was called upon in—for preparation of that booklet.

Q Okay. I'm going to show you a document that's been marked into evidence as Exhibit J-119.

Is that the booklet that you worked on with Mr. Dubois?

A Yes.

Q Do you recall, Mr. Carr, what time period it was that you and Mr. Du Bois were working on that booklet?

A It was approximately 1980.

Q Is there any reason why that time period sticks in your mind?

A Yes.

Q Can you explain?

A Mr. Du Bois—let's see. On page 32 of the booklet that **[5.117]** was responsible for that clause which said, "Coverage under this plan will cease for retirees and their dependents on the termination of business operation of the facility from which they retire."

Well, my recollection is slightly different. My recollection is that I was responsible for adding it because it was an obvious redundancy what was there before.

The reason I put it there was that I had become aware of the Yardman (phonetic) decision very early on. And I was flabbergasted by the decision.

I wanted to make sure that our booklet spelled out in no uncertain terms that the company had the unfettered right to terminate this plan. And it did. But I went one step further.

Q What is your recollection of when the Yardman decision came out, is that the District Court or the Circuit Court opinion?

A What happened was, I was unaware of the decision but obviously the UAW must have reported in one of its publications.

That segment that was reported was outlined in red and dropped off on Vince Kunz's desk. Vince Kunz was the manager of labor relations for the Wood-Ridge facility. His office was downstairs from mine. Little ways away but downstairs. He brought it up, showed it to me. This would have been about 1980 also.

Q Some time in that area?

A Yeah, sometime.

[5.118] Q Okay. Let's get this straight about you and Mr. Du Bois working together.

You're telling us now that this particular phrase in the termination section was your idea?

A I didn't see it when the first draft came to my desk.

Q That first draft was prepared by whom?

A Mr. Du Bois' department.

Q And did you thereafter work with Mr. Du Bois on subsequent drafts and the language?

A Yeah. This clause in particular I did. I inserted it.

What draft it came back in I don't know but it was after I saw the first draft I wanted to be completely sure. I don't remember when I saw the first draft. But it may have been a galley. I'm not sure.

Q In any event, you and Mr. DuBois, I take it, worked on this together?

A Yes.

Q Now, Mr. Carr, when you worked with Mr. Du Bois in adding this language, specifically the language about the plant closing, page 32, of the 1983 summary plan description, did you consider that to be a change in Curtiss-Wright policy?

A No.

Q Why is that?

A I had drafted the constitution and I had expressed the unfettered ability to Curtiss-Wright to terminate the plan or to **[5.119]** amend it to any degree.

I also experienced the Marquette closedown which we terminated the plan. We terminated the health benefits and there was a lawsuit out of that, by the way as Mr. Du Bois had said, and I was the attorney that settled that lawsuit.

I also had known from my experience in reading the files on the 1970 shutdown of the East Paterson facility. It was very clear in my mind.

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SUPREME COURT OF THE UNITED STATES

No. 93-1935

CURTISS-WRIGHT CORPORATION,

Petitioner,

—v.—

FRANK C. SCHOONEJONGEN, et al.,

Respondents.

ORDER ALLOWING CERTIORARI.

Filed September 26, 1994.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 8, 1994. The brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 6, 1994. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 20, 1994. Rule 29.2 does not apply.

September 26, 1994